



STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
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WILMINGTON, DELAWARE 19801

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CHIEF MAGISTRATE

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POLICY DIRECTIVE 80-025

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE
FROM: NORMAN A. BARRON
CHIEF MAGISTRATE
DATE: NOVEMBER 10, 1980
RE: DETOX

An issue has recently been raised as to whether a Justice of the Peace should authorize a warrant which charges an individual with a crime while committed to a Detoxification Center, (Detox). Suppose John Doe is committed to Detox because of his intoxicated condition. While at Detox, and because of his intoxicated condition, he strikes a Detox employee who summons the police. The police respond and conclude that the Detox employee has grounds for charging John Doe with Assault 3rd degree in violation of 11 Del.C., §611¹. Assuming probable cause, should you as the Judge, authorize the warrant?

¹ A person is guilty of Assault in the third degree when he intentionally or recklessly causes physical injury to another person. 11 Del.C., §611. An intoxicated person may not be able to act intentionally. Thus, the charge might more appropriately be framed in terms of a reckless state of mind. Note also that 11 Del.C., §421 states that, "The fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary".

If the complaint with affidavit sets forth probable cause for you to believe that a crime was committed and that the person charged committed said crime, then the warrant should be authorized as in any other case.

Mr. Sheldon Schweidel, Director of the Division of Mental Health, recently informed me that the attendants at the two Detox centers have been given training in the handling of intoxicated subjects which training has included the use of manual defense. Additionally, I understand that in the near future, isolation rooms will be provided at each Detox center. These factors indicate that the risks of patient-attendant confrontations will be minimized. Mr. Schweidel anticipates that no frivolous charges will be pressed. Because Mr. Schweidel further informs me that it is the policy of Detox to accept anyone referred to them for detoxification, unless the person is violent or unless hospitalization is required or unless the person referred is plainly not in need of the services offered at Detox, I believe we should lend our judicial services to Detox personnel when called upon to do so. An application for a warrant should not be rejected merely because the incident occurred at Detox and the crime was allegedly perpetuated by a patient therein.

Another issue which has been raised centers around the authority, or lack thereof, of Justices of the Peace to commit persons to Detox. Chapter 22 of Title 16 of the Delaware Code, as amended, entitled the Uniform Alcoholism and Intoxification Treatment Act (the Uniform Act), which became effective on July 16, 1979, and which, by implication, repealed 11 Del.C., §§4210, 4211,

4212², governs the area of commitment to Detox. The Uniform Act appears to give no specific power to Justices of the Peace to commit, involuntarily, alcoholics for treatment. 16 Del.C., §2213. Nor does it appear to give Justices of the Peace power to commit intoxicated persons or persons incapacitated by alcohol for emergency treatment. 16 Del.C., §2212. For this, and numerous other reasons, the Act has been, ever since its passage, the subject of growing criticism. At the same time, a broad reading of the Act does not appear to preclude Justices of the Peace from committing individuals to Detox for a limited period of up to 48 hours for the purpose of detoxifying the individual committed. The very purpose of the Act is to accord those subject to its provisions humane treatment instead of incarcerating them as criminals. Alcoholism is, under the Act as well as under modern thinking, a disease and not a crime³. Surely an odd and anomalous result occurs if Justices of the Peace must commit to the Department of Corrections, assuming an inability to make secured bail, the very persons who are the object of the Act's commendable purpose⁴. The purpose of the Act is thereby defeated.

² 11 Del.C., §4213 concerns itself with persons under the influence of drugs as opposed to alcohol and is, in my view, unaffected by 16 Del.C., Chapter 22.

³ For example, 16 Del.C., §2211(b) decriminalizes the offense of Public Intoxication in violation of 11 Del.C., §1315. See also: 16 Del.C., §2201.

⁴ It is also noted that the Department of Corrections has steadfastly maintained that it has no adequate treatment facilities for persons committed to its custody while intoxicated.

A rule of statutory construction mandates that a statute must be construed to give effect to the intent of the Legislature. 2A Sutherland's Statutory Construction, §45.05, 4th edition.

Because of the obvious purpose of the Act which is to treat rather than to incarcerate intoxicated persons, and because the Department of Corrections cannot adequately handle said persons, and because Detox has expressed a willingness to accept all persons, with limited exceptions as expressed herein, for treatment, and, finally, because the Act does not specifically exempt Justices of the Peace from its provisions, I conclude that Justices of the Peace may, take the following action vis-a-vis Detox:

1. Where no criminal charge has been lodged against an intoxicated person⁵ or a person incapacitated by alcohol⁶, the provisions of 16 Del.C., §2211⁷ shall control;

⁵ An intoxicated person is one whose mental or physical functioning is substantially impaired as a result of the use of alcohol. 16 Del.C., §2203(11).

⁶ A person incapacitated by alcohol is one who, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision as to his need for treatment. The determination of whether a person is incapacitated by alcohol may be made by evidence of extreme debilitation, physical harm or threats to others, or chronic inability to hold regular employment. 16 Del.C., §2203(9).

⁷ 16 Del.C., §2211 states as follows:

"(a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility or an approved private treatment facility, whichever he may choose, by a law-enforcement officer.

(b) Any person incapacitated by alcohol, except where apprehended under a criminal charge, shall be taken into protective custody, and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency

2. Where a criminal charge has been lodged against the person and he is before you for initial appearance, as a condition of bail⁸ you may commit him, if he is an intoxicated person who has threatened, attempted or inflicted physical harm on himself or on another person or property and is likely to inflict physical harm on himself or on another person or property unless committed,

7 (Continued)

medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. Unless such person has been taken into custody for a charge other than simple alcoholism or public intoxication, no entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(c) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a qualified person under the supervision of a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(d) A person, whose medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at the time after his admission, may not be involuntarily detained at the facility:

(1) When he is no longer incapacitated by alcohol;
or.

(2) If he remains incapacitated by alcohol more than 48 hours after admission as a patient, unless he is committed under §2212 of this title. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility and has no funds may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(f) Law-enforcement officers who act in compliance with this section are acting in the course of their official duty and are not criminally or civilly liable therefor. If a licensed physician and the administrator in charge of the approved public treatment facility determine it is for the patient's benefit, based on a medical examination by the physician, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment."

⁸ 11 Del.C., §2108(4), (6) and (9).

or if he is incapacitated by alcohol and in need of immediate emergency treatment and care, to Detox for a period of up to 48 hours⁹. Of course, the person may be discharged prior thereto if Detox determines that the grounds for commitment no longer exist¹⁰; and,

3. Where a criminal charge has been lodged against the person and he is before you for initial appearance, and secured bail is set which the person is unable to post, you may commit him, if he is an intoxicated person who has threatened, attempted or inflicted physical harm on himself or on another person or property and is likely to inflict physical harm on himself or on another person or property unless committed, or if he is incapacitated by alcohol and in need of immediate emergency treatment and care, to Detox for a period of up to 48 hours with custody being transferred to the Department of Corrections thereafter. It shall be the Court's responsibility to ensure that a Justice of the Peace Court Constable or a police officer transfers the person to the Department of Corrections upon expiration of the commitment to Detox. Where Detox determines that the grounds for commitment to Detox no longer exist and where the 48 hours period has not elapsed, Detox shall notify the Court by telephone to expedite the transfer of the person to the custody of the Department of Corrections.

⁹16 Del.C., §2212(c).

¹⁰16 Del.C., §2212(e).

cc: The Honorable Daniel L. Herrmann
John R. Fisher, Esquire
Arthur R. Carello, Court Administrator
John Sullivan, Commissioner, Department of Corrections
Fred VanSant, Chief, Bureau of Adult Corrections
Sheldon Schweidel, Director, Division of Mental Health
Colonel Norman V. Cochran
Colonel Nicholas Valiante
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